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NOTE CHANGES MADE BY THE COURT.

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Attorneys for Defendant
HOME DEPOT U.S.A., INC.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ALEXIS P. NAPIER, individually and
on behalf of other persons similarly
situated,

Plaintiff,

v.

HOME DEPOT U.S.A., INC. and
DOES 1 through 10,

Defendants.

Case No. CV-12-08999-PA (PLAx)

~~PROPOSED~~ ORDER REGARDING
CONFIDENTIAL DISCOVERY
MATERIAL

INTRODUCTION

Plaintiff alleges that defendant Home Depot U.S.A., Inc. failed to pay all overtime compensation owed, and failed to provide accurate wage statements. The parties anticipate that during the course of this litigation they will rely on confidential employment and policy information relating to the defendant's policies. The parties agree that the protective order herein requested is necessary to protect confidential and private information, including proprietary business records of defendant and employment and wage records pertaining third parties, from disclosure, since disclosure could cause irreparable harm. Discovery may also involve confidential, proprietary, or private information for which special protection from public disclosure and use for purposes other than this litigation would be proper. Accordingly, good cause exists for the entry of a protective order regarding confidential discovery material in accordance with the terms set forth below.

The parties hereby agree that the Court enter the following Stipulated Protective Order Regarding Confidential Discovery Material ("Stipulated Protective Order") with respect to pre-trial discovery. This Stipulated Protective Order will govern documents and information produced by the parties in *Napier v. Home Depot U.S.A., Inc.*, Civil Action No. CV-12-08999-PA (PLAx).

I. DESIGNATION AND USE OF CONFIDENTIAL MATERIAL

A. During the course of this litigation, any party may seek to have discovery material classified as "confidential" if the designating party in good faith believes that it contains confidential or personal information regarding current or former Home Depot employees, confidential commercial or proprietary information, trade secrets, or any other confidential protected information under state or federal law. Discovery material that is so designated is referred to herein as "confidential material." The designating party will mark each page "confidential" of any document designated as such. The designation will be made to avoid obscuring or defacing any portion of the discovery

1 material. Should any party, counsel for any party, or any person not a party to this
2 action, who obtains access to any confidential material make copies of or from such
3 material, the material will also be designated confidential and all references in this
4 Stipulated Protective Order will be deemed to apply to such copies. In the event that
5 marking each page of a document or group of documents as confidential would cause
6 burden, the designating party may instead designate a range of documents or pages,
7 identified by Bates numbers, accompanied by a writing clearly identifying the range as
8 confidential. Testimony based on information designated confidential will be identified
9 by a statement on the record or marking as confidential documents or selected pages of
10 documents containing such testimony.

11 B. If any party, through inadvertence, fails to designate discovery material as
12 confidential, but thereafter determines that such discovery material should have been so
13 designated, it promptly will provide written notice of the confidential designation and to
14 the extent practicable the discovery material will be treated as confidential material from
15 the date of receipt of such notice. If a party designates discovery material confidential
16 and later determines that such discovery material should not have been so designated, it
17 will provide written notice of the removal of the designation and a copy of the discovery
18 material without the confidential marking.

19 C. All confidential material and any portion thereof, including copies thereof,
20 and any information derived therefrom, will be deemed confidential and will be for use
21 in these proceedings only, including purposes that may be considered ancillary to this
22 action, but are related to the resolution of the claims asserted in the action, such as the
23 mediation, negotiation, or voluntary arbitration of one or more of the asserted claims.

24 D. All confidential material, including copies thereof, and any information
25 derived therefrom will not be disclosed in any way to anyone other than: (a) the Court
26 and Court personnel; (b) the parties' counsel; (c) stenographic reporters; (d) the named
27 parties; (e) any current or former officers, directors, or employees of the parties who are
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1 needed to assist counsel in this action; and the following, provided that they expressly
2 agree to be bound by the terms of this Stipulated Protective Order by signing the form
3 attached as exhibit A (discussed below in section II); (f) any retained expert witness or
4 consultant retained regarding this action; (g) witnesses at, and in preparation for,
5 deposition, trial, or hearing in this action, or whom counsel has otherwise determined
6 are required to review the information in order for counsel to properly prosecute or
7 defend this matter, and (h) outside vendors who perform photocopying, data entry, or
8 similar clerical functions. Confidential material may not be disclosed to any other
9 person or entity without the prior written consent of the designating party or order of the
10 Court.

11 E. Any disclosure should be only to the extent reasonably necessary for the
12 effective prosecution and defense of the claims in this action, and for no other purpose.
13 Confidential materials may not be used in any other legal action, unless the designating
14 party certifies in writing that such a use is permitted.

15 II. CONDITIONS OF DISCLOSURE

16 A. As set forth in paragraph I.D. above, prior to the disclosure of confidential
17 material to the persons qualified to receive it but required to execute exhibit A, counsel
18 for the requesting party will secure from each such person the signed exhibit A, which
19 provides that he or she (i) has read this Stipulated Protective Order, (ii) will not divulge
20 any confidential material except in the preparation, trial, or appeal of this action and in
21 accordance with the terms and conditions of the Stipulated Protective Order, and (iii)
22 will not use the material for any other purpose.

23 B. Confidential material will be copied only by the parties' counsel in this
24 action or by personnel or outside vendors assisting such counsel and only for purposes
25 permitted by this Stipulated Protective Order. Control and distribution of confidential
26 material will be the responsibility of counsel, who will maintain a list of all persons to
27 whom confidential material has been disclosed and the written form executed by such
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1 persons as provided in paragraphs I.D and II.A. In the event of any question of
2 improper disclosure under this section, the Parties agree that all such disputes shall be
3 resolved according to the procedure set forth in Civil Local Rule 37. To the extent
4 either party wishes to file a joint stipulation pursuant to Civil Local Rule 37 under seal,
5 that party must file an ex parte application showing that good cause exists to file the
6 joint stipulation under seal.

7 C. The restrictions set forth in this Stipulated Protective Order will not apply
8 to: (a) information that was, is, or becomes public knowledge through its authorized
9 release by a person or entity who rightfully obtained and possesses such information
10 during the normal course of business, and not in violation of this Stipulated Protective
11 Order; or (b) defendants (or their affiliates), with respect to their own information or
12 information received or created during the normal course of their business. Whether
13 information that becomes a matter of public record in any other manner may still be
14 subject to protection as confidential will be determined according to the standards and
15 procedures set forth herein.

16 D. If material is produced by a third party to the litigation (i.e., by subpoena)
17 that any party believes to be confidential, it may designate the material by marking it
18 confidential and providing the marked copy to the other parties. The other parties will
19 then either (i) agree to treat the material as confidential pursuant to the terms of this
20 Stipulated Protective Order, or (ii) inform the designating party that they do not agree
21 that the material should be governed by the terms, but nevertheless treat the material as
22 confidential hereunder for a period of at least 20 days from notice of the confidentiality
23 designation, to give the party desiring protection time to seek appropriate relief from the
24 Court. Treatment of the material as confidential hereunder will continue until the Court
25 resolves the issue.

1 III. PROTECTING CONFIDENTIAL INFORMATION AT DEPOSITIONS

2 A. To designate confidential information in testimony, the designating party
3 will (i) make an oral statement to that effect on the record, or (ii) notify the recipients in
4 writing at any time up to 20 days after receipt of the transcript.

5 B. If any confidential material is marked as an exhibit in a deposition and its
6 contents are disclosed in the course of the testimony at such proceeding, counsel for the
7 parties will (i) advise the reporter that the exhibit(s) refer to confidential material or (ii)
8 notify the recipients in writing at any time up to 20 days after receipt of the transcript.
9 In either instance, the exhibit itself, as well as the portions of the transcript containing
10 such disclosure, will be marked confidential and will be deemed confidential material.
11 To this end, the reporter will not furnish copies thereof to anyone other than counsel of
12 record for the parties herein, and, if so requested by such counsel, the witness and the
13 witness' counsel.

14 IV. USE OF CONFIDENTIAL INFORMATION IN COURT FILINGS

15 To the extent a party intends to file under seal material that was previously
16 designated by any party as confidential material, the filing party must comply with Civil
17 Local Rule 79-5. Any document designated as confidential material is deemed
18 appropriate for filing under seal only if the party intending to file it as such also submits
19 an application complying with Civil Local Rule 79-5 showing good cause for the
20 material to be filed under seal, and which application is subsequently granted by the
21 Court. The application must be directed to the judge to whom the papers are directed.
22 For motions, the parties will publicly file a redacted version of the filing. Pending
23 ruling on the application, the papers or portions thereof subject to the sealing application
24 shall be lodged under seal. Nothing in this paragraph will prevent the parties from
25 conferring before any filing in an effort to resolve any dispute regarding whether sealing
26 is necessary. Failure to seal a document does not waive its confidentiality designation.
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V. CHALLENGING A CONFIDENTIAL DESIGNATION

If at any time during this litigation a party disputes the designation of discovery material as confidential, the objecting party will notify the designating party in writing by facsimile or electronic mail of such dispute. The notice will identify the material in dispute and explain the basis for the objection. The designating party will have 10 days to provide a written response by facsimile or electronic mail to the notice, explaining its reason for designating the material at issue as confidential. Should the objecting party dispute such reasons, it will so notify the designating party, and the objecting party will have 20 days from the date of such notice to seek appropriate relief from the Court. In the event a party disputes the designation of discovery material as confidential prior to the start of trial, the parties will follow the procedures set forth in Civil Local Rule 37 to resolve the dispute (including the joint stipulation requirement). During the dispute resolution procedure in this paragraph, the designating party will have the burden of demonstrating that the material is properly designated as confidential. In the event of a dispute, the parties will continue to treat the disputed discovery material as confidential until the dispute is resolved.

VI. NON-PARTY SUBPOENAS

If any party receives a subpoena from any non-party seeking production or disclosure of confidential material, that party (the "subpoenaed party") will give notice, as soon as practicable and in no event more than five business days after receiving the subpoena, to counsel for the designating party, which notice will enclose a copy of the subpoena. The subpoenaed party will not produce or disclose any of the confidential material for a period of seven business days, if possible without violating the subpoena, after providing such notice to the other party, and in no event will such production or disclosure be made before such notice is provided. If, within this seven business day period, Court relief is sought ^{pursuant to Local Rules 37.0-45} objecting to or seeking to quash or modify the subpoena, the subpoenaed party will wait for resolution, unless the Court orders, or the applicable

1 rules direct, otherwise. However, nothing contained in this paragraph is intended to be
2 construed as authorizing a party to disobey a lawful subpoena issued in another action.

3 **VII. NO RESTRICTIONS**

4 Nothing in this Stipulated Protective Order will (i) restrict any party with regard
5 to discovery material not designated as confidential; (ii) prejudice any party's rights to
6 object to the disclosure of documents or other information that it considers not subject
7 to discovery; (iii) restrict the scope of discovery; or (iv) prejudice any party's right to
8 seek greater or lesser protection than that provided herein, or modification of the terms
9 of this Stipulated Protective Order.

10 Nothing in this Stipulated Protective Order will be deemed to be a limit on or
11 waiver of the attorney-client privilege, work product privilege, or any other relevant
12 privilege.

13 **VIII. RETURN OF CONFIDENTIAL MATERIALS**

14 Within 60 days after the conclusion of this action, including any appeals, all
15 materials designated as confidential material, and copies thereof, will be returned to the
16 designating party. This provision will not apply to court filings or copies of pleadings,
17 briefs, or correspondence maintained by the parties' counsel in the ordinary course of
18 business. The parties may agree that, instead of returning the confidential material, it
19 will be destroyed, with appropriate verification of destruction.

20 **IX. BINDING EFFECT**

21 In the event the Court does not execute this Stipulated Protective Order, the
22 parties agree to meet and confer in good faith to revise the stipulation to conform to the
23 Court's specifications, if any, and submit a revised Order within 15 days of the Court's
24 denial of entry of the Order. In the interim, the parties agree that this stipulation will be
25 binding as a contract between the parties and their respective counsel until the Court's
26 entry of an acceptable order.

1 Once executed, this Stipulated Protective Order will remain in effect at all times
2 during which any party or any person having executed the attached exhibit A retains in
3 his, her, or its possession, custody, or control any confidential material. To the extent
4 that confidential discovery material is introduced at trial, the protections of this
5 protective order do not extend beyond the commencement of trial, unless, on the motion
6 of the designating party with good cause showing, the district judge orders otherwise.

7 **X. ADDITIONAL PARTIES TO LAWSUIT**

8 If other parties are added to this action, no confidential material will be disclosed
9 to such other parties except upon their written agreement to be bound by the provisions
10 of this Stipulated Protective Order.

11 **XI. ADDITIONAL RIGHTS**

12 This Stipulated Protective Order is without prejudice to the right of any party to
13 seek, pursuant to Fed. R. Civ. P. 26(c) and Civil Local Rule 37, an order for protection
14 of confidential material which protection is different from or in addition to that provided
15 for in this Stipulated Protective Order. Similarly, all parties expressly reserve the right
16 at any time to request the Court to authorize disclosure other than contemplated
17 hereunder of materials subject to this Stipulated Protective Order.

18 **IT IS SO ORDERED.**

19 Dated: 12/17/12

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21 Mon. Paul L. Abrams
22 United States Magistrate Judge
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EXHIBIT A

ACKNOWLEDGEMENT CONCERNING INFORMATION
COVERED BY A PROTECTIVE ORDER ENTERED
IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

The undersigned hereby acknowledges that he/she has read the Stipulated Protective Order Regarding Confidential Discovery Material ("Stipulation" or "Stipulated Protective Order") governing *Napier v. Home Depot USA, Inc.*, Civil Action No. CV-12-08999-PA (PLAx), and understands its terms, agrees to be bound by each of those terms, and agrees to subject himself/herself personally to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing its terms. If the undersigned individual is incapable of reading and independently understanding the terms of the Stipulation, plaintiff's counsel warrants, by also signing below, that the terms have been fully explained to the individual, and the individual has agreed to be bound by the terms on that basis. Specifically, and without limitation upon such terms, the undersigned agrees not to use or disclose any Confidential Material made available to it/him/her other than in accordance with the terms and conditions of this Stipulated Protective Order.

Dated: _____, 20____

By: _____
Signature

Printed Name

Of: _____
Name of Employer

Plaintiff's counsel (if applicable): _____
Signature